

COMPLIANCE BOARD OPINION NO. 03-3
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February 4, 2003

Raymond Carigan, Esquire

The Open Meetings Compliance Board has considered the complaint that you filed on behalf of Ms. Cindy Obermaier concerning the November 4, 2002, meeting of the Anne Arundel County Animal Control Commission. For the reasons set forth below, we conclude that, at this meeting, the Commission was engaged in a quasi-judicial function not subject to the Open Meetings Act. Consequently, the conduct of a portion of the meeting in closed session did not violate the Act.

I

Background

Your complaint stated that, on behalf of Ms. Obermaier, you attended a hearing on November 4, 2002, before the Anne Arundel County Animal Control Commission. Apparently, after hearing evidence, the Commission exited to an adjoining room that was closed to the public in order to discuss the case. The Commission then returned to the hearing room and announced its decision. Your complaint questioned whether this practice violated the Open Meetings Act.

In a timely response on behalf of the Commission, Senior Assistant County Attorney William D. Evans, Jr., denied that the Open Meetings Act had been violated. Mr. Evans referred us to provisions of the Anne Arundel County Code addressing the role of the Commission “with respect to adjudicating citations and dangerous or potentially dangerous dog orders.” Mr. Evans indicated that the Commission, in carrying out these duties, is performing a judicial or quasi-judicial function. He noted that any party dissatisfied with a decision of the Commission may appeal to the County’s Board of Appeals, and then to the Circuit Court for Anne Arundel County in accordance with Title 7, Chapter 200 of the Maryland Rules.

After receiving a copy of Mr. Evans’ response, you submitted an additional letter, denying that the Commission’s actions involved either a judicial or quasi-judicial function. Because neither your complaint nor the Commission’s initial response indicated the precise nature of the November 4 proceedings, after receipt of your follow-up letter, we requested that the Commission supplement its response, detailing the nature of the proceedings at issue and the procedures concerning such

proceedings. In a supplemental response, Mr. Evan's addressed the proceedings involving Ms. Obermaier's dogs, Sparky and Chewy, the administrative process involved, and he reiterated the Commission's position that it was engaged in either a judicial or quasi-judicial function.

As we understand the facts, the proceedings involved a review of animal control authorities' determinations that the dogs were either dangerous or potentially dangerous. Following the Commission's proceedings, a recommendation was made to the Police Department that Sparky be released, but that Chewy should be retained in custody. The Police Department adopted the Commission's recommended decisions. By letter dated November 25, 2002, the Police Department notified Ms. Obermaier of its decision regarding Chewy and set forth her right to appeal. Apparently, an appeal is currently pending before the County Board of Appeals.

Our review is limited to the application of the Open Meetings Act to the Commission's November 4 meeting.

II

Discussion

The Open Meetings Act applies when a "public body" conducts a "meeting" on a topic within the Act's scope. *See* §§10-502(g) and (h) and 10-503.¹ When the Act applies, it generally requires open meetings, even when the public body is deliberating about a matter. §10-505.

There appears to be no dispute that the Animal Control Commission is a "public body" for purposes of the Act, and that a "meeting" occurred on November 4, 2002. The Commission is established by local law as a unit within the Anne Arundel County Police Department. Anne Arundel County Code, Article 12, §2-101. The Commission consists of seven members, and generally four members constitute a quorum. *Id.*, §§2-102(a) and 2-104(a).² A quorum was evidently present on November 4.

¹ Unless otherwise noted, all statutory references are to the Open Meetings Act, Title 10, Subtitle 5, of the State Government Article, Annotated Code of Maryland.

² While County law authorizes the Chairman to convene a body of three members for certain proceedings, *Id.* §2-104(b), because the panel is authorized by law, it would appear that even if a panel conducted the meeting in question, the panel itself constitutes a "public body" for purposes of the Act. §10-502(h).

However, not every meeting of a public body is covered by the Act. Subject to limited exceptions not relevant here, the Act does not apply to a public body when it is engaged in an executive, judicial, or quasi-judicial function. §10-503(a)(1).³ Counsel for the Commission suggested that the Commission was engaged in either a judicial or a quasi-judicial function during the course of the meeting. We agree that the Commission's hearing involved a quasi-judicial function.⁴

A "quasi-judicial function" is defined, in part, as "a proceeding before an administrative agency for which Title 7, Chapter 200 of the Maryland Rules would govern judicial review." §10-502(i)(2). To be sure, under the County's ordinance, the Commission's decision is in the form of a recommendation to the Police Department and it is the Police Department's final decision that may be appealed to the Board of Appeals. However, the Police Department apparently relies, at least in part, on the record developed before the Commission. As we understand it, the Board of Appeals hears the case *de novo*. If the owner of the animal is dissatisfied with the Board's decision, she may pursue an appeal in the circuit court. In our view, this process is consistent with the definition of a "quasi-judicial function" under the Open Meetings Act. As explained in the Commission's response, "[a]ny party dissatisfied with a decision of the Commission may ultimately appeal to Board of Appeals, and then to the Circuit Court in accordance with the Maryland Rules." See Anne Arundel County Charter, §§602(e) and 604; *see also*, Article 25A, §5(U), Maryland Code.

Because the Commission's November 4 session involved a quasi-judicial function, neither the substantive nor procedural requirements of the Open Meetings Act applied. §10-503(a)(1)(iii); Compliance Board Opinion 98-1 (March 27, 1998), *reprinted in 2 Official Opinions of the Maryland Open Meetings Compliance Board* 1, 2-3.⁵

³ Even if a public body is engaged in an executive, judicial, or quasi-judicial function, the Act nonetheless applies when a public body is engaged in the process of "granting a license or permit." §10-503(b)(1). Consideration of action against someone who already has a license, however, does not involve the grant of the license.

⁴ We reject the suggestion that the Commission was engaged in a "judicial function" as defined under the Open Meetings Act. See §10-502(e) (judicial function limited to the Judicial Branch of the State Government).

⁵ The fact that the Commission's decision in certain cases may be a recommendation to a county official does not alter the nature of the proceeding. Any final decision apparently would be based on the record developed before the Commission.

III

Conclusion

Based on our understanding of the activities of the Commission at its November 4 meetings, we conclude that the Commission was engaged in a quasi-judicial function to which the Open Meetings Act did not apply. Therefore, the Commission did not violate the Act by holding a closed session. We caution that our opinion should not be construed as implying that all meetings of the Animal Control Commission are outside the scope of the Open Meetings Act. For example, if the Commission had occasion to engage in some form of rulemaking or other instance of policy formation, the Open Meeting Act would apply.

OPEN MEETINGS COMPLIANCE BOARD

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